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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 NICHOLAS BRUCK,

9 Plaintiff,

10 v.

11 WALGREEN CO., a foreign  
12 corporation,

Defendant.

C24-1803 TSZ

MINUTE ORDER

13 The following Minute Order is made by direction of the Court, the Honorable  
14 Thomas S. Zilly, United States District Judge:

15 (1) Plaintiff's Motion to Disqualify Defense Counsel, docket no. 10, is  
16 GRANTED. Washington's Rule of Professional Conduct ("RPC") 1.9 sets forth lawyers'  
17 duties to former clients and provides that "[a] lawyer who has formerly represented a  
18 client in a matter shall not thereafter represent another person in the same or a  
19 substantially related matter in which that person's interests are materially adverse to the  
20 interests of the former client unless the former client gives informed consent, confirmed  
21 in writing." To determine whether a violation of RPC 1.9 requires disqualification, "the  
22 burden of proof rests 'upon the firm whose disqualification is sought.'" FMC Tech., Inc.  
23 v. Edwards, 420 F. Supp. 2d 1153, 1158 (W.D. Wash. 2006) (quoting Amgen, Inc. v.  
Elanex Pharms., Inc., 160 F.R.D. 134, 139–40 (W.D. Wash. 1994)). Courts may  
disqualify an attorney for not only acting improperly but also for failing to avoid the  
appearance of impropriety. Gas-A-Tron of Arizona v. Union Oil Co. of California, 534  
F.2d 1322, 1324–25 (9th Cir. 1976). In cases where a conflict of interest is asserted,  
courts should resolve any doubts in favor of disqualification. REC Solar Grade Silicon,  
LLC v. Shaw Grp., Inc., 2010 WL 11561252, at \*8 (E.D. Wash. Nov. 5, 2010).

1 The Ogletree Deakins attorneys previously represented Plaintiff and Defendant  
2 Walgreen Co. in the Ashley matter for approximately two months in April-June 2023  
3 (“Representation Period.”). Plaintiff, a former district manager for Walgreen, had  
4 extensive discussions and exchanged various documents with the Ogletree Deakins  
5 attorneys during that time. Decl. of Nicholas Bruck (docket no. 10-7 at 2–3). During that  
6 time, Bruck also exchanged substantial information with the attorneys about his  
7 interactions with Jaime Ashley. As further explained below, there is a substantial risk  
8 that in the course of this representation, lawyers associated with Ogletree Deakins might  
9 have acquired information related to the subject matter of the present case.  
10 Disqualification is required. See RPC 1.9 cmts. 1, 3 (“Matters are ‘substantially related’  
11 for purposes of this Rule if . . . there otherwise is a substantial risk that confidential  
12 factual information as would normally have been obtained in the prior representation  
13 would materially advance the client’s position in the subsequent matter.”).

14 Prior to that Representation Period, Plaintiff had filed an EEOC complaint against  
15 Walgreen to determine whether, under Washington law, Plaintiff’s termination on  
16 October 5, 2021, was for misconduct. After a contested hearing, the Administrative Law  
17 Judge (“ALJ”) issued an Initial Order dated April 3, 2023, finding Walgreens had failed  
18 to establish misconduct. At all times during the pendency of the Administrative  
19 Proceeding, Walgreen was adverse to Plaintiff and had actual notice of the Initial Order  
20 sent to Walgreen on April 3, 2023. Initial Order at 1, 8–9 (docket no. 14-7). The present  
21 action filed thereafter involves claims by Plaintiff against Walgreen for wrongful  
22 termination and retaliation arising from the same termination.

23 Walgreen’s Response, docket no. 12 at 3, to the instant motion suggests that Bruck  
“concealed” the filing of the EEOC charge “from Walgreens and its counsel.” See also  
Decl. of Adam Pankratz (docket no. 13 at ¶ 8). The Court rejects this contention. In fact,  
at all times material, Walgreen knew of the charges filed a year before, actively  
participated in the hearing before the ALJ, and received a copy of the Initial Order before  
the Ogletree Deakins attorneys ever had contact with Plaintiff. Walgreen had a duty to  
disclose these facts to its attorneys and cannot now complain that it must now employ  
new counsel in this case. In fact, the Pankratz declaration states that “if Bruck had  
disclosed his Charge at that time, Ogletree *would not* have offered to jointly represent  
him and Walgreens.” Id. (emphasis added). The Court agrees with Plaintiff and finds  
that Ogletree should never have made such an offer or represented Plaintiff in this action  
and must withdraw. The Court also concludes that the signed joint waiver agreement  
does not require a different result.

(2) The Court hereby EXTENDS the following deadlines: FRCP 26(f)  
Conference Deadline is now February 24, 2025, Initial Disclosures Deadline is now  
March 10, 2025, and Joint Status Report is now due by March 10, 2025.

1 (3) The Clerk is directed to send a copy of this Minute Order to all counsel of  
2 record.

3 Dated this 17th day of January, 2025.

4 Ravi Subramanian  
5 Clerk

6 s/Laurie Cuaresma  
7 Deputy Clerk